

WASHINGTON

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1. Identify the venues/areas in your State that are considered dangerous or liberal.

Suits following collisions in the tri-counties of Pierce, King and Snohomish tend to have liberal jury pools. The same is true in Clark County on the border with Oregon and Whatcom County on the border with British Columbia. Apart from those, we see fairly conservative damage awards in the more rural areas of the state.

2. Identify any significant trucking verdicts in your State during 2017-2018, both favorable and unfavorable from the trucking company's perspective.

We have identified no significant verdicts in the 2017-2018 time frame.

3. Are accident animations and/or computer-generated evidence admissible in your State?

Admissible so long as the judge is convinced as to authenticity and to the helpfulness of the animation evidence to assist the jury in understanding the evidence. Generally, the animation/simulation must be presented to illustrate an expert's analysis and the reasons for the expert's conclusion. General requirements are referenced in the Washington case of *State v. Hultenschmidt*, 125 Wn. App. 259, 102 P.3d 192 (2004).

4. Identify any significant decisions or trends in your State in the past two (2) years regarding (a) retention and spoliation of in-cab videos and (b) admissibility of in-cab videos.

There have been no recent decisions regarding retention or spoliation of in-cab videos. These would be admissible so long as authenticity and relevance can be established. Spoliation is defined as the intentional or willful destruction of evidence. *Henderson v. Tyrrell*, 80 Wn. App. 592, 910 P.2d 522 (1996)

5. Identify any significant decisions or trends in your State in the past two (2) years regarding (a) retention and spoliation of in-cab videos and (b) admissibility of in-cab videos.

We have identified no appellate cases or telematics specific statutes requiring retention. If an evidence hold letter is received, and if telematics data is available, it should be retained or face an argument of spoliation of evidence.

6. Is a positive post-accident toxicology result admissible in a civil action?

Generally, these results would be admissible in a civil action.

7. Is post-accident investigation discoverable by adverse counsel?

The company's post-accident investigation may be discoverable. Washington state has no appellate case adopting the privilege of self-critical analysis.

8. Describe any laws in your State which regulate automated driving systems (autonomous vehicles) or platooning.

We have identified no regulation of such systems as of this time in the State of Washington.

9. Describe any laws or Court decisions in your State which would preclude a commercial driver from using a hands-free device to have a conversation over a cell phone.

Washington state law makes it illegal for a driver to hold an electronic device, even when stopped at an intersection. The exception is to make a 911 or emergency services call. RCW 46.61.667.

10. Identify any Court decisions in your State precluding Golden Rule and/or Reptile style arguments by Plaintiffs' counsel.

Golden Rule arguments are prohibited under Washington law. *Adkins v. Aluminum Company of America*, 110 Wn.2d 128, 139, 750 P.2d 1257 (1988). There have been no decisions regarding "Reptile style" arguments.

11. Compare and contrast the advantage and disadvantages of Federal Court versus State Court in your State.

In Washington, the state judges tend to be much more flexible and willing to grant extensions or modifications of pre-trial Scheduling Orders. Federal judges are likely to demand strict adherence with local federal rules and court orders setting deadlines. Litigation in federal court tends to be more expensive than in a state court civil proceeding.

12. How does your State handle the admissibility of traffic citations (guilty plea, pleas of no contest, etc.) in subsequent civil litigation?

Evidence regarding the issuance of a traffic citation is inadmissible. Likewise, a guilty plea to a traffic citation may be excluded in subsequent civil litigation.

13. Describe the laws in your State which regulate whether medical bills stemming from an accident are recoupable. In other words, can a plaintiff seek to recover the amount

charged by the medical provider or the amount paid to the medical provider? Is there a basis for post-verdict reductions or offsets?

Washington has one appellate case on this topic. In that opinion, the Appeals Court held that the trial court did not abuse its discretion by excluding evidence that plaintiff's physician accepted less money for his services than he billed. In Washington, plaintiffs are permitted to recover the reasonable value of the medical services they receive, not the total of all bills paid. *Hayes v. Wieber Enterprises*, 105 Wn. App. 611, 20 P.3d 496 (2001). Washington does not generally permit post-verdict reductions or offsets.

14. Describe any statutory caps in your State dealing with damage awards.

There are no caps in Washington State with regard to damage awards.